UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/555,921	06/06/2000	WOLFGANG KAUFHOLD	MO-5726/LEA	9638

7590 10/21/2002

BAYER CORPORATION
100 BAYER ROAD
PITTSBURGH, PA 15205-9741

EXAMINER	
SERGENT, RABON A	

ART UNIT	PAPER NUMBER
1711	19

DATE MAILED: 10/21/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS

AND INTERFERENCES

Paper No. 19

Application Number: 09/555,921

Filing Date: June 6, 2000

Appellant(s): Kaufhold et al.

John E. Mrozinski

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed July 30, 2002.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 1, 3-5, 7, and 9 under 35 U.S.C. 102(b or e) stand or fall together and the rejection of claims 1-5, 7, and 9 under 35 U.S.C. 103 stand or fall together because appellant's brief does not include a statement that these groupings of claims do not stand or fall together and reasons in support thereof. See 37 CFR 1.192(c)(7).

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

The following is a listing of the prior art of record relied upon in the rejection of claims under appeal.

3,642,964	Rausch et al.	2-1972
3,963,679	Ullrich et al.	6-1976
5,739,252	Kirchmeyer et al.	4-1998

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless -
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 3-5, 7, and 9 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Kirchmeyer et al. ('252) or Ullrich et al. ('679).

Patentees disclose the continuous production of polyurethane elastomers, wherein the reactant components are rapidly mixed prior to reaction or at an early stage of the reaction, so as to obtain more uniform mixing and reaction. Kirchmeyer et al. disclose the use of a double screw extruder and Ullrich et al. disclose the use of static mixers. Though patentees are silent regarding the temperatures of the reaction constituents, prior to their entry into the mixer, the position is taken that one would have immediately envisaged, from the prior art, the removal and use from storage of the reactant species. Taken from storage, it is reasonable to conclude that at some point these species would have had the same temperature. It is well established that reactants are stored under ambient conditions whenever possible to avoid increased production cost or unnecessary use of resources. As such, appellants' temperature condition is considered to be inherently met by the disclosures. Appellants' claims merely require the temperature condition to be satisfied at some point prior to the reactants entering the reactor, and this condition may be satisfied while the reactants are being transported, stored, or removed from storage.

In response to the examiner's position, appellants have cited art, which they argue supports their position that thermoplastic polyurethanes were produced at the time of invention from reactants having respective temperatures which exceed appellants' claimed twenty degree difference. The examiner has considered appellants' argument and art. Firstly, contrary to appellants' statement, it is noted that an English copy of EP 708,124 has not been provided;

however, appellants have provided with the appeal brief an English translation of DE 2823762. It does not appear that this reference corresponds to EP 708,124, since the inventorship differs. Still, it is noted that DE 2823762 discloses the production of thermoplastic polyurethanes, wherein the reactants are initially introduced into a premixer at a maintained temperature. The reactants, upon leaving the premixer to be introduced into the reactor, would be expected to have the same temperature at that point. Accordingly, it is unclear how the teachings of DE 2823762 support appellants' position. Secondly, with respect to the argued teachings of Zeitler et al. ('927) and DE 2418075, the position is taken that the argued disclosures pertain to the reactants at the point that they are introduced into the reactor. The disclosures in no way address the examiner's position that appellants' temperature condition, unbounded by when the condition is met, is inherently met at some point prior to reaction, such as during transport or storage.

Claims 1-5, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kirchmeyer et al. ('252) or Ullrich et al. ('679), each in view of Rausch et al. ('964).

The primary references disclose the continuous production of polyurethane elastomers, wherein the reactant components are rapidly mixed prior to reaction or at an early stage of the reaction, so as to obtain more uniform mixing and reaction. Kirchmeyer et al. disclose the use of a double screw extruder and Ullrich et al. disclose the use of static mixers.

While neither of the primary references disclose the use of reactant streams having comparable temperatures, the use of comparable temperatures for reactant streams used for the continuous production of thermoplastic polyurethanes was a known and conventional practice at

The examiner has considered the examples of the application for showings of unexpected results; however, the examples are not commensurate in scope with the claimed species or conditions.

(11) Response to Argument

Appellants' arguments have been addressed with the ***Grounds of Rejection***.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

RABON SERGENT
PRIMARY EXAMINER

R. Sergent
October 21, 2002

Conferees:

Supervisory Patent Examiner Seidleck

Supervisory Patent Examiner Wu

Bayer Corporation
100 Bayer Road
Pittsburgh, PA. 15205-9741

US 095559210KP1

Creation date: 03-03-2004
Indexing Officer: GWINTERS - GARRETT WINTERS
Team: OIPEBackFileIndexing
Dossier: 09555921

Legal Date: 12-23-2002

No.	Doccode	Number of pages
1	A...	1
2	REM	3
3	FOR	26

Total number of pages: 30

Remarks:

Order of re-scan issued on .....